

In the Court of Appeals of the State of Alaska

Andrew C. Horton II,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13538**

Order

Date of Order: **October 12, 2021**

Trial Court Case No. **3AN-13-05305CR**

In September, the State filed a motion requesting permission to supplement the appellate record with a discovery document (a confidential three-page report) that both parties were aware of during litigation in the trial court, but that was not made part of the trial court record. The Appellant, represented by Attorney Dan Bair, opposed the State's motion primarily on the ground that because this document is not part of the trial court record, it was never presented to the trial court. This Court denied the State's motion because under the appellate rules, material that was never presented to the trial court may not be added to the record on appeal. *See* Appellate Rule 210(a). The Court noted that the denial was without prejudice and the State was free to renew its motion if it could show that the trial court was in fact aware of and relied upon the three-page document when making findings or ruling on an issue contested in this appeal.

The State has now renewed its motion and again requests permission to supplement the appellate record with the confidential three-page report that both parties were aware of during litigation in the trial court, but that was not made part of the trial court record. The State concedes that as far as the State knows, this document was not presented to the trial court, but points out that the document is relevant to an issue that the Appellant raises in this appeal, but did not raise in the trial court. The State asks this Court to relax Appellate Rule 210(a) under the authority of Appellate Rule 521, the rule

Horton II v. State - p. 2
File No. A-13538
October 12, 2021

that allows the Court to relax strict adherence to the appellate rules to avoid injustice. The Appellant again opposes the State's motion.

The Court recognizes the State's position that this document is relevant to an issue raised as a matter of plain error in this appeal, but after reviewing the parties' pleadings and the confidential three-page document at issue, the Court nonetheless concludes that the State has not shown that Appellate Rule 210(a) should be relaxed to allow supplementing the appellate record with a document never presented to the trial court.

Accordingly, **IT IS ORDERED:**

The State's motion is **DENIED**. Because there may be future litigation regarding this matter, the Appellate Clerk's Office is directed to lodge the confidential document in the pleading file of this case.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read 'Kaitlin D'Eimon', written over a horizontal line.

Kaitlin D'Eimon, Deputy Clerk

Distribution:

Email:
Bair, Daniel S., OPA - Contract
Stryszak, Michal